

16.11.00.00 - PORTER BILL PARK LEASES

16.11.01.00 General

CTC Resolution No. G-3 (Exhibit 16-EX-9) sets forth the general terms and conditions of the lease of excess property to local agencies for park purposes (S&H Code Section 104.15).

incorporated in the right of way or is disposed of by public sale.

- The proposed use of the excess land would enhance the highway facility or further integrate the highway into the local environment.

16.11.02.00 Determination of Qualifying Parcels

Pursuant to S&H Code Section 104.15, District Right of Way shall assist local agencies in developing park and recreational facilities on excess land where such use represents the highest and best use.

As excess parcels are certified for disposal, Excess Land shall review them for conformance with the criteria established for Section 104.15.

Excess Land should negotiate a direct sale to a local agency on any parcel with a market value of \$2,500 or less since the procedures for processing a Porter Bill application are complex and expensive for both the local agency and the Department.

Taking into consideration the terms and conditions of the lease, Excess Land shall lease only those excess parcels where the fair rental value substantially equals the value of the enhancement and benefit to the State highway in preserving its view, appearance, light, air, and usefulness. The rental rate shall be determined considering the present value of the proposed construction and maintenance of park improvements, including any cost to maintain landscaping undertaken by the lessee within the State highway right of way, which would otherwise be the Department's obligation. A minimum rental fee of \$100 shall be charged.

On routes involving federal participation, the following qualifying criteria are used as a guide in obtaining FHWA participation.

- The final voucher has not been submitted for the right of way project.
- The related highway facility has not been open to traffic for more than two years.
- There would be no substantial difference in Federal participation whether the parcel is

16.11.03.00 Local Agency Notification

Where excess properties are economically and physically suited for park and recreational uses, local agencies shall be invited to consider such development.

Excess Land shall notify all interested local agencies, such as cities, counties, and recreational districts, of the availability of parcels. The notification should indicate that the Department intends to sell the excess land but will withhold the properties from public sale for 60 days to allow local agencies to respond.

The local agency shall be furnished with a copy of a Request for Consideration of Lease of Excess Land Pursuant to Section 104.15 (Exhibit 16-EX-10), appropriate maps of the available area, and a copy of the proposed lease (Exhibit 16-EX-11). See Exhibit 16-EX-12, Instructions on Use of Lease Format.

16.11.04.00 Request for Consideration of Lease

The local agency shall have no more than 60 days after receipt of the written notice to inform the Department of its intention to apply for use of excess lands for park purposes pursuant to Section 104.15. The local agency shall submit a Request for Consideration of Lease of Excess Land Pursuant to Section 104.15 within 120 days of notifying the Department of its intention. The local agency's request or application must be accompanied by the following:

- An 8 ½" x 11" or 11" x 17" preliminary development plan that includes a description of the proposed development, type of activity, location of active recreational facilities, and access routes from the State highway and the local community area. The plan should also provide a brief justification of need for the lease for park and recreational purposes.

- Estimates of construction and annual maintenance costs.
- Proposed method of financing the project.
- Time frame for development.

16.11.05.00 **Fair Market Value Requirement**

Excess Land shall inform the local agency that it will be required to purchase the affected property at fair market value whenever the excess parcel:

- Exceeds a depth necessary to protect the State highway, public work, or improvement and its environs or will not preserve its view, appearance, light, air, and usefulness; and
- Use of a portion of the land for park purposes, pursuant to Section 104.15, may have a detrimental effect on the market value or salability of the excess land lying beyond the depth necessary to protect the State highway, public work, or improvement and its environs or will not preserve its view, appearance, light, air, and usefulness.

Fair market value shall be based on the value of the affected property as a part of the whole parcel for its highest and best use without consideration of the effects of the proposed park.

16.11.06.00 **District Investigation**

Upon receiving notification from the local agency of its intention to apply for use of excess lands for purposes pursuant to Section 104.15, the district will investigate the use to which the excess property will be put and the extent to which projected use will protect such highway, public work, or improvement and its environs and will preserve its view, appearance, light, air, and usefulness.

The District Porter Bill Review Committee (consisting of District Right of Way, Landscape Architecture, and Environmental Analysis) shall conduct the investigation. If the district does not have a representative available, it should request participation through the appropriate Headquarters office. The Committee shall certify that the entire area covered by the proposed application conforms to the requirements of Section 104.15 and shall make a recommendation for Certification of Conformance, Exhibit 16-EX-13, to the DD or the DDC-R/W.

Either the DD or the DDC-R/W will execute the Certificate.

16.11.07.00 **Criteria**

Criteria for determining the extent to which projected use will protect the highway, public work, or improvement and its environs and will preserve its value, appearance, light, air, and usefulness shall include, but not be limited to, the items in the chart on the following page.

Criteria	Explanation		
Economic Uses	All economic uses of the property should be considered and a determination made that park and recreational development is economically practical and that no unreasonable revenue loss will be incurred by development as proposed.		
Economic Feasibility	The measure of economic feasibility shall be where the fair rental value, taking into consideration the terms and conditions of the lease, substantially equals the value of the enhancement and benefit to the highway, public work, or improvement in preserving its view, appearance, light, air, and usefulness.		
Visibility	Neither immediate access from the highway nor visibility of all portions of the parcel to be leased by highway motorists is a requirement. If any portion of the parcel is not visible, an analysis should be made of the possible benefits from developing the nonvisible portion as a park or the drawbacks from selling the parcel for development, relative to the criteria established for Section 104.15. That portion of the parcel not visible may be included in the leased area if positive benefits are expected for either the State or the local agency.		
Continuous Development	Portions of the larger parcel not capable of continuous development should not be considered for lease. Continuous development could be hampered by natural or man-made obstacles, such as flood control channels, tree banks, railroad tracks, or streams.		
Joinder	Joinder to other parcels with different uses or a higher and better use for independent development should be considered. A narrow strip adjoining a residential development would probably be best used by joining to the residential development if it is not of sufficient size to be used for park purposes.		
Value	No portion of the parcel to be leased shall unreasonably exceed in value the present enhancement and benefit criteria applied to the larger parcel.		
Recreation/Use	The proposed development may be either for active recreation or passive enjoyment. Active recreational facilities should be located or screened by planting or other means so use does not create a nuisance, distraction, or hazard to the highway user or nearby community. For example, parking areas and maintenance yards must be screened by landscaping and night lighted facilities must be located so lights do not create a distraction, glare, or hazard.		
Environmental Hazards	<p>Environmental hazards and constraints should be considered both for potential beneficial or adverse effect on park use, as well as in determining fair market value.</p> <table border="0"> <tr> <td> <p>Seismic zones</p> <ul style="list-style-type: none"> • Located on fault • Near fault • Potential damage from landslides <p>Floodplains</p> <ul style="list-style-type: none"> • Likelihood of occurrence • Potential damage to wells or other improvements • Propensity to reduce capacity of flood channels • Permit required or prohibitions against development • Protection of riparian vegetation </td><td> <p>Unstable soils</p> <ul style="list-style-type: none"> • Landslides or mudflows • Shrink swell characteristics • Foundation or bearing constraints • Subsidence • Erodibility <p>Topography</p> <ul style="list-style-type: none"> • Slope excessive • Access limited • Exposure to adverse weather <p>Health and safety hazards</p> <ul style="list-style-type: none"> • Dangerous areas, e.g. cliffs and crevasses • Quicksands or bog areas • Agricultural spraying • Riptides, undertows, etc. • Throwing objects on roadway • Objects thrown from roadway </td></tr> </table>	<p>Seismic zones</p> <ul style="list-style-type: none"> • Located on fault • Near fault • Potential damage from landslides <p>Floodplains</p> <ul style="list-style-type: none"> • Likelihood of occurrence • Potential damage to wells or other improvements • Propensity to reduce capacity of flood channels • Permit required or prohibitions against development • Protection of riparian vegetation 	<p>Unstable soils</p> <ul style="list-style-type: none"> • Landslides or mudflows • Shrink swell characteristics • Foundation or bearing constraints • Subsidence • Erodibility <p>Topography</p> <ul style="list-style-type: none"> • Slope excessive • Access limited • Exposure to adverse weather <p>Health and safety hazards</p> <ul style="list-style-type: none"> • Dangerous areas, e.g. cliffs and crevasses • Quicksands or bog areas • Agricultural spraying • Riptides, undertows, etc. • Throwing objects on roadway • Objects thrown from roadway
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Sensitive Areas	Environmentally sensitive areas should be considered.
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Criteria	Explanation
	<div> <div> Wildlife habitat <ul style="list-style-type: none"> Limited extent Unique Rare or endangered species of wildlife present Breeding or nursery area Essential to life cycle of certain species Proximity to State or Federal Refuges Protection of wetlands or other critical habitats Value for scientific purposes (academic research) </div> <div> Coastal zone or other area of unique value <ul style="list-style-type: none"> Provide beach access Equestrian, pedestrian, bicycle use potential Aesthetic considerations </div> <div> Heritage resources <ul style="list-style-type: none"> Historical significance Archaeological significance Natural landmark Paleontological value </div> <div> Water areas <ul style="list-style-type: none"> Potential for pollution of domestic or municipal sources Hazard to users Value as wildlife habitat Aesthetic considerations Recreational uses </div> <div> Vegetation <ul style="list-style-type: none"> Rare or endangered species Specimen trees Aesthetic considerations Erosion protection Potential commercial value Value for scientific purposes </div> </div>
Sensitive Elements	<p>Socially sensitive elements from perspective of both impact of the park on adjacent areas and the adjacent areas (including the highway) upon the park should be considered such as the following:</p> <div> <div> Noise <ul style="list-style-type: none"> Sensitivity of receptors Character of neighborhood Proposed use of park </div> <div> Traffic <ul style="list-style-type: none"> Safety Noise and air pollution Parking Access Increase on residential streets Create barrier to circulation </div> <div> Air quality <ul style="list-style-type: none"> Sensitivity of receptors Potential for increase of pollutants due to increasing traffic </div> </div>

16.11.08.00 **District Process**

Upon receipt of the Request for Consideration of Lease of Excess Land Pursuant to Section 104.15 from the interested local agency, the district will develop the items in the following table.

Item	Explanation
Fair market value appraisal	Meeting the requirements set forth in Section 16.04.00.00.
Engineering statement	Signed by appropriate district representative containing: <ul style="list-style-type: none">• Age of State highway or public work.• Estimated economic life.• Planned or anticipated additional transportation requirements for adjacent or nearby facilities that could affect the planned park and a map showing such effect. The anticipated year of impact and a negative statement, if applicable, should be included.• Traffic volumes through the planned economic life of the highway facility.
Statement of anticipated reasonable annual maintenance costs	Based on the leased portion remaining in State ownership and being incorporated into the Right of Way. This should be signed by a representative of the Landscape Architecture staff.

After receiving the items listed in the table, Excess Land shall complete the Supplemental Data Sheet (Exhibit 16-EX-14).

Excess Land shall forward copies of the following documents to HQ R/W for review and submittal to the CTC:

- Local agency's request with attached preliminary development plan.
- District Certification of Conformance.
- Approved fair market value appraisal.

- Supplemental Data Sheet.
- Engineering statement.
- Maintenance cost statement.

16.11.09.00 **CTC Determination**

The final determination in each case rests with the CTC and can only be made after analysis of the development plans, cost, benefits, appraisal, and other factors.

If the CTC determines such park use is appropriate, Excess Land shall notify the local agency and cooperate with it in preparing detailed plans and specifications for the proposed development.

Excess Land shall immediately advise the local agency if its application is not approved. The local agency may appeal the decision.

16.11.10.00 **Lease Negotiations**

Excess Land shall negotiate a lease and sales contract, where appropriate, with the local agency. The property is withheld from sale for a period of one year after the CTC approves the application.

Within the one-year period, the local agency shall submit detailed plans for development of the proposed park for the District Landscape Architect's review and approval. The local agency shall also submit proof of its financial ability to commence construction of the proposed park within two years after plan approval and to complete construction within three years after plan approval.

If the local agency is unable to complete the detailed plans or negotiate a lease and sales contract within the one-year period, a 90-day extension may be granted. Excess Land shall process the parcel(s) for public sale after the 90-day extension period unless the local agency can demonstrate substantial progress towards completing the required documents.

16.11.11.00 **Lease Execution**

Upon approval of the detailed development plans, execution of the lease by the local agency, and preparation of Director's Deeds and sales contract, if appropriate, Excess Land shall execute the lease according to the existing delegation of authority.

After the lease is executed, Excess Land shall remove the parcels under lease from the Excess Land Inventory and transfer them into Special Account #784001 (excess land under long-term park leases).

16.11.12.00 **Compliance**

After the lease is executed, Excess Land is responsible to ensure that the local agency complies with the terms of the lease.

16.11.13.00 **Lease Provisions**

The standard Lease for Park and Recreational Purposes Pursuant to Section 104.15 and

instructions for use of the lease can be found in Exhibits 16-EX-11 and 16-EX-12.

The terms and conditions as shown on the standard lease are applicable to all leases executed pursuant to Section 104.15. The CTC may prescribe additional terms.

16.11.14.00 **Appraisal Requirement**

A fair market value appraisal is required in all cases involving leases under Section 104.15. The fair market value appraisal must contain the additional data listed in the table below.

Data	Explanation
Breakdown statement of fair market value and fair rental value	For property as a whole and for areas carrying a different or higher value.
Map	Showing: <ul style="list-style-type: none"> • Areas of varying value. • Area of lease. • Area of the remainder. • Total area proposed for development as park and present ownership. • Unique topographic factors (such as power lines, freeways, rivers, and streets) as well as any environmental sensitivities or hazards.
Estimate of fair market value	Under the conditions of the lease and factors affecting value determination as to the area to be leased.
Fair market value of any remainder	Appraiser's rationale.

Appraisals shall use the information listed above to establish the rental rate appropriate under the terms of Section 104.15 and to determine whether or not the local agency will be required to purchase property lying beyond the area to be leased.

HQ R/W, Appraisal Office, must review and approve all appraisals prepared for properties proposed to be leased pursuant to Section 104.15.